

AMENDED IN ASSEMBLY JANUARY 6, 2014  
AMENDED IN ASSEMBLY SEPTEMBER 10, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1335**

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**Introduced by Assembly Member Maienschein**

February 22, 2013

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An act to amend Sections 264, 264.1, 286, 288a, 288.5, 289, 667.61, and 2933.1 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Maienschein. Sex offenses: disabled victims.

(1) ~~Under existing law~~ *Existing law requires that a person who commits rape, or an act of sodomy, oral copulation, or sexual penetration, against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, is punishable by imprisonment in the state prison for 3, 6, or 8 years, under existing law, in the case of years. Existing law also requires that a person who commits sodomy, oral copulation, or sexual penetration, the crime is punishable if, at the time of the offense, both the defendant and the victim are confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered, be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or by imprisonment in a county jail for a period of not more than one year, if both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any*

~~other public or private facility for the care and treatment of the mentally disordered. year.~~

This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years. By increasing the punishment for these crimes, this bill would impose a state-mandated local program.

(2) Under existing law, a defendant who, voluntarily acting in concert with another person, by force or by violence and against the will of the victim, commits an act of rape, spousal rape, or sexual penetration, either personally or by aiding and abetting the other person, is guilty of a crime punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would make it a crime punishable by imprisonment in the state prison for 10, 12, or 14 years to commit an act of rape, spousal rape, or sexual penetration in concert with another person, either personally or by aiding and abetting the other person, against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By creating a new crime, this bill would impose a state-mandated local program.

(3) Under existing law, any person who resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with a child ~~under the age of 14 years of~~ *age*, is guilty of the offense of continuous sexual abuse of a child, punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.

This bill would make any person who resides in the same home with a disabled person or has recurring access to the disabled person, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with the disabled person, guilty of the crime of continuous sexual abuse of a disabled person, and would make the crime punishable by imprisonment in the state prison for a term of 6, 12, or 16 years. By creating a new crime, this bill would impose a state-mandated local program.

(4) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the

commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. The bill would also add continuous sexual abuse of a disabled person to the above provisions. The bill would apply the above provisions to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(5) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if, among other things, in the commission of that offense any person, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. Under the bill, the above provisions would also apply to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability,

of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(6) Existing law prohibits a person who is convicted of a violent felony offense from accruing more than 15% of worktime credit, as defined, against his or her prison sentence.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent to the above provisions.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 264 of the Penal Code is amended to  
2 read:

3 264. (a) Except as provided in subdivision (c), rape, as defined  
4 in Section 261 or 262, is punishable by imprisonment in the state  
5 prison for three, six, or eight years.

6 (b) In addition to any punishment imposed under this section  
7 the judge may assess a fine not to exceed seventy dollars (\$70)  
8 against any person who violates Section 261 or 262 with the  
9 proceeds of this fine to be used in accordance with Section 1463.23.  
10 The court shall, however, take into consideration the defendant's  
11 ability to pay, and no defendant shall be denied probation because  
12 of his or her inability to pay the fine permitted under this  
13 subdivision.

14 (c) (1) Any person who commits rape in violation of paragraph  
15 (2) of subdivision (a) of Section 261 upon a child who is under 14  
16 years of age shall be punished by imprisonment in the state prison  
17 for 9, 11, or 13 years.

18 (2) Any person who commits rape in violation of paragraph (2)  
19 of subdivision (a) of Section 261 upon a minor who is 14 years of  
20 age or older shall be punished by imprisonment in the state prison  
21 for 7, 9, or 11 years.

1 (3) Any person who commits rape in violation of paragraph (1)  
2 of subdivision (a) of Section 261 shall be punished by  
3 imprisonment in the state prison for 9, 11, or 13 years.

4 (4) This subdivision does not preclude prosecution under Section  
5 269, Section 288.7, or any other provision of law.

6 SEC. 2. Section 264.1 of the Penal Code is amended to read:

7 264.1. (a) The provisions of Section 264 notwithstanding, in  
8 any case in which the defendant, voluntarily acting in concert with  
9 another person, by force or violence and against the will of the  
10 victim, committed an act described in Section 261, 262, or 289,  
11 either personally or by aiding and abetting the other person, that  
12 fact shall be charged in the indictment or information and if found  
13 to be true by the jury, upon a jury trial, or if found to be true by  
14 the court, upon a court trial, or if admitted by the defendant, the  
15 defendant shall suffer confinement in the state prison for five,  
16 seven, or nine years.

17 (b) (1) If the victim of an offense described in subdivision (a)  
18 is a child who is under 14 years of age, the defendant shall be  
19 punished by imprisonment in the state prison for 10, 12, or 14  
20 years.

21 (2) If the victim of an offense described in subdivision (a) is a  
22 minor who is 14 years of age or older, the defendant shall be  
23 punished by imprisonment in the state prison for 7, 9, or 11 years.

24 (3) This subdivision does not preclude prosecution under Section  
25 269, Section 288.7, or any other provision of law.

26 (c) In any case in which the defendant, voluntarily acting in  
27 concert with another person, committed an act described in Section  
28 261, 262, or 289, either personally or by aiding and abetting the  
29 other person, that fact shall be charged in the indictment or  
30 information and if found to be true by the jury, upon a jury trial,  
31 or if found to be true by the court, upon a court trial, or if admitted  
32 by the defendant, the defendant shall suffer confinement in the  
33 state prison for 10, 12, or 14 years if the victim of the offense is  
34 at the time incapable, because of a mental disorder or  
35 developmental or physical disability, of giving legal consent, and  
36 this was known or reasonably should have been known to the  
37 person committing the act.

38 ~~SEC. 3. Section 286 of the Penal Code is amended to read:~~

39 ~~286. (a) Sodomy is sexual conduct consisting of contact~~  
40 ~~between the penis of one person and the anus of another person.~~

1 Any sexual penetration, however slight, is sufficient to complete  
2 the crime of sodomy.

3 ~~(b) (1) Except as provided in Section 288, any person who~~  
4 ~~participates in an act of sodomy with another person who is under~~  
5 ~~18 years of age shall be punished by imprisonment in the state~~  
6 ~~prison, or in a county jail for not more than one year.~~

7 ~~(2) Except as provided in Section 288, any person over the age~~  
8 ~~of 21 years who participates in an act of sodomy with another~~  
9 ~~person who is under 16 years of age shall be guilty of a felony.~~

10 ~~(c) (1) Any person who participates in an act of sodomy with~~  
11 ~~another person who is under 14 years of age and more than 10~~  
12 ~~years younger than he or she shall be punished by imprisonment~~  
13 ~~in the state prison for three, six, or eight years.~~

14 ~~(2) (A) Any person who commits an act of sodomy when the~~  
15 ~~act is accomplished against the victim's will by means of force,~~  
16 ~~violence, duress, menace, or fear of immediate and unlawful bodily~~  
17 ~~injury on the victim or another person shall be punished by~~  
18 ~~imprisonment in the state prison for three, six, or eight years.~~

19 ~~(B) Any person who commits an act of sodomy with another~~  
20 ~~person who is under 14 years of age when the act is accomplished~~  
21 ~~against the victim's will by means of force, violence, duress,~~  
22 ~~menace, or fear of immediate and unlawful bodily injury on the~~  
23 ~~victim or another person shall be punished by imprisonment in the~~  
24 ~~state prison for 9, 11, or 13 years.~~

25 ~~(C) Any person who commits an act of sodomy with another~~  
26 ~~person who is a minor 14 years of age or older when the act is~~  
27 ~~accomplished against the victim's will by means of force, violence,~~  
28 ~~duress, menace, or fear of immediate and unlawful bodily injury~~  
29 ~~on the victim or another person shall be punished by imprisonment~~  
30 ~~in the state prison for 7, 9, or 11 years.~~

31 ~~(D) This paragraph does not preclude prosecution under Section~~  
32 ~~269, Section 288.7, or any other provision of law.~~

33 ~~(3) Any person who commits an act of sodomy where the act~~  
34 ~~is accomplished against the victim's will by threatening to retaliate~~  
35 ~~in the future against the victim or any other person, and there is a~~  
36 ~~reasonable possibility that the perpetrator will execute the threat,~~  
37 ~~shall be punished by imprisonment in the state prison for three,~~  
38 ~~six, or eight years.~~

39 ~~(d) (1) Any person who, while voluntarily acting in concert~~  
40 ~~with another person, either personally or aiding and abetting that~~

1 other person, commits an act of sodomy when the act is  
2 accomplished against the victim's will by means of force or fear  
3 of immediate and unlawful bodily injury on the victim or another  
4 person or where the act is accomplished against the victim's will  
5 by threatening to retaliate in the future against the victim or any  
6 other person, and there is a reasonable possibility that the  
7 perpetrator will execute the threat, shall be punished by  
8 imprisonment in the state prison for five, seven, or nine years.

9 (2) Any person who, while voluntarily acting in concert with  
10 another person, either personally or aiding and abetting that other  
11 person, commits an act of sodomy upon a victim who is under 14  
12 years of age, when the act is accomplished against the victim's  
13 will by means of force or fear of immediate and unlawful bodily  
14 injury on the victim or another person, shall be punished by  
15 imprisonment in the state prison for 10, 12, or 14 years.

16 (3) Any person who, while voluntarily acting in concert with  
17 another person, either personally or aiding and abetting that other  
18 person, commits an act of sodomy upon a victim who is a minor  
19 14 years of age or older, when the act is accomplished against the  
20 victim's will by means of force or fear of immediate and unlawful  
21 bodily injury on the victim or another person, shall be punished  
22 by imprisonment in the state prison for 7, 9, or 11 years.

23 (4) This subdivision does not preclude prosecution under Section  
24 269, Section 288.7, or any other provision of law.

25 (e) Any person who participates in an act of sodomy with any  
26 person of any age while confined in any state prison, as defined  
27 in Section 4504, or in any local detention facility, as defined in  
28 Section 6031.4, shall be punished by imprisonment in the state  
29 prison, or in a county jail for not more than one year.

30 (f) Any person who commits an act of sodomy, and the victim  
31 is at the time unconscious of the nature of the act and this is known  
32 to the person committing the act, shall be punished by  
33 imprisonment in the state prison for three, six, or eight years. As  
34 used in this subdivision, "unconscious of the nature of the act"  
35 means incapable of resisting because the victim meets one of the  
36 following conditions:

37 (1) Was unconscious or asleep.

38 (2) Was not aware, knowing, perceiving, or cognizant that the  
39 act occurred.

1     ~~(3) Was not aware, knowing, perceiving, or cognizant of the~~  
2     ~~essential characteristics of the act due to the perpetrator's fraud in~~  
3     ~~fact.~~

4     ~~(4) Was not aware, knowing, perceiving, or cognizant of the~~  
5     ~~essential characteristics of the act due to the perpetrator's fraudulent~~  
6     ~~representation that the sexual penetration served a professional~~  
7     ~~purpose when it served no professional purpose.~~

8     ~~(g) Except as provided in subdivision (h), a person who commits~~  
9     ~~an act of sodomy, and the victim is at the time incapable, because~~  
10    ~~of a mental disorder or developmental or physical disability, of~~  
11    ~~giving legal consent, and this is known or reasonably should be~~  
12    ~~known to the person committing the act, shall be punished by~~  
13    ~~imprisonment in the state prison for 9, 11, or 13 years.~~  
14    ~~Notwithstanding the existence of a conservatorship pursuant to~~  
15    ~~the Lanterman-Petris-Short Act (Part 1 (commencing with Section~~  
16    ~~5000) of Division 5 of the Welfare and Institutions Code), the~~  
17    ~~prosecuting attorney shall prove, as an element of the crime, that~~  
18    ~~a mental disorder or developmental or physical disability rendered~~  
19    ~~the alleged victim incapable of giving consent.~~

20    ~~(h) Any person who commits an act of sodomy, and the victim~~  
21    ~~is at the time incapable, because of a mental disorder or~~  
22    ~~developmental or physical disability, of giving legal consent, and~~  
23    ~~this is known or reasonably should be known to the person~~  
24    ~~committing the act, and both the defendant and the victim are at~~  
25    ~~the time confined in a state hospital for the care and treatment of~~  
26    ~~the mentally disordered or in any other public or private facility~~  
27    ~~for the care and treatment of the mentally disordered approved by~~  
28    ~~a county mental health director, shall be punished by imprisonment~~  
29    ~~in the state prison for 9, 11, or 13 years. Notwithstanding the~~  
30    ~~existence of a conservatorship pursuant to the~~  
31    ~~Lanterman-Petris-Short Act (Part 1 (commencing with Section~~  
32    ~~5000) of Division 5 of the Welfare and Institutions Code), the~~  
33    ~~prosecuting attorney shall prove, as an element of the crime, that~~  
34    ~~a mental disorder or developmental or physical disability rendered~~  
35    ~~the alleged victim incapable of giving legal consent.~~

36    ~~(i) Any person who commits an act of sodomy, where the victim~~  
37    ~~is prevented from resisting by an intoxicating or anesthetic~~  
38    ~~substance, or any controlled substance, and this condition was~~  
39    ~~known, or reasonably should have been known by the accused,~~



1 shall be punished by imprisonment in the state prison for three,  
2 six, or eight years.

3 (j) Any person who commits an act of sodomy, where the victim  
4 submits under the belief that the person committing the act is the  
5 victim's spouse, and this belief is induced by any artifice, pretense,  
6 or concealment practiced by the accused, with intent to induce the  
7 belief, shall be punished by imprisonment in the state prison for  
8 three, six, or eight years.

9 (k) Any person who commits an act of sodomy, where the act  
10 is accomplished against the victim's will by threatening to use the  
11 authority of a public official to incarcerate, arrest, or deport the  
12 victim or another, and the victim has a reasonable belief that the  
13 perpetrator is a public official, shall be punished by imprisonment  
14 in the state prison for three, six, or eight years.

15 As used in this subdivision, "public official" means a person  
16 employed by a governmental agency who has the authority, as part  
17 of that position, to incarcerate, arrest, or deport another. The  
18 perpetrator does not actually have to be a public official.

19 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
20 means a threat to kidnap or falsely imprison, or inflict extreme  
21 pain, serious bodily injury, or death.

22 (m) In addition to any punishment imposed under this section,  
23 the judge may assess a fine not to exceed seventy dollars (\$70)  
24 against any person who violates this section, with the proceeds of  
25 this fine to be used in accordance with Section 1463.23. The court,  
26 however, shall take into consideration the defendant's ability to  
27 pay, and no defendant shall be denied probation because of his or  
28 her inability to pay the fine permitted under this subdivision.

29 SEC. 4. Section 288a of the Penal Code is amended to read:

30 288a. (a) Oral copulation is the act of copulating the mouth  
31 of one person with the sexual organ or anus of another person.

32 (b) (1) Except as provided in Section 288, any person who  
33 participates in an act of oral copulation with another person who  
34 is under 18 years of age shall be punished by imprisonment in the  
35 state prison, or in a county jail for a period of not more than one  
36 year.

37 (2) Except as provided in Section 288, any person over the age  
38 of 21 years who participates in an act of oral copulation with  
39 another person who is under 16 years of age is guilty of a felony.

1     ~~(e) (1) Any person who participates in an act of oral copulation~~  
2     ~~with another person who is under 14 years of age and more than~~  
3     ~~10 years younger than he or she shall be punished by imprisonment~~  
4     ~~in the state prison for three, six, or eight years.~~

5     ~~(2) (A) Any person who commits an act of oral copulation when~~  
6     ~~the act is accomplished against the victim's will by means of force,~~  
7     ~~violence, duress, menace, or fear of immediate and unlawful bodily~~  
8     ~~injury on the victim or another person shall be punished by~~  
9     ~~imprisonment in the state prison for three, six, or eight years.~~

10    ~~(B) Any person who commits an act of oral copulation upon a~~  
11    ~~person who is under 14 years of age, when the act is accomplished~~  
12    ~~against the victim's will by means of force, violence, duress,~~  
13    ~~menace, or fear of immediate and unlawful bodily injury on the~~  
14    ~~victim or another person, shall be punished by imprisonment in~~  
15    ~~the state prison for 8, 10, or 12 years.~~

16    ~~(C) Any person who commits an act of oral copulation upon a~~  
17    ~~minor who is 14 years of age or older, when the act is accomplished~~  
18    ~~against the victim's will by means of force, violence, duress,~~  
19    ~~menace, or fear of immediate and unlawful bodily injury on the~~  
20    ~~victim or another person, shall be punished by imprisonment in~~  
21    ~~the state prison for 6, 8, or 10 years.~~

22    ~~(D) This paragraph does not preclude prosecution under Section~~  
23    ~~269, Section 288.7, or any other provision of law.~~

24    ~~(3) Any person who commits an act of oral copulation where~~  
25    ~~the act is accomplished against the victim's will by threatening to~~  
26    ~~retaliate in the future against the victim or any other person, and~~  
27    ~~there is a reasonable possibility that the perpetrator will execute~~  
28    ~~the threat, shall be punished by imprisonment in the state prison~~  
29    ~~for three, six, or eight years.~~

30    ~~(d) (1) Any person who, while voluntarily acting in concert~~  
31    ~~with another person, either personally or by aiding and abetting~~  
32    ~~that other person, commits an act of oral copulation (1) when the~~  
33    ~~act is accomplished against the victim's will by means of force or~~  
34    ~~fear of immediate and unlawful bodily injury on the victim or~~  
35    ~~another person, or (2) where the act is accomplished against the~~  
36    ~~victim's will by threatening to retaliate in the future against the~~  
37    ~~victim or any other person, and there is a reasonable possibility~~  
38    ~~that the perpetrator will execute the threat, or (3) where the victim~~  
39    ~~is at the time incapable, because of a mental disorder or~~  
40    ~~developmental or physical disability, of giving legal consent, and~~

1 ~~this is known or reasonably should be known to the person~~  
2 ~~committing the act, shall be punished by imprisonment in the state~~  
3 ~~prison for five, seven, or nine years. Notwithstanding the~~  
4 ~~appointment of a conservator with respect to the victim pursuant~~  
5 ~~to the provisions of the Lanterman-Petris-Short Act (Part 1~~  
6 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~  
7 ~~Institutions Code), the prosecuting attorney shall prove, as an~~  
8 ~~element of the crime described under paragraph (3), that a mental~~  
9 ~~disorder or developmental or physical disability rendered the~~  
10 ~~alleged victim incapable of giving legal consent.~~

11 (2) ~~Any person who, while voluntarily acting in concert with~~  
12 ~~another person, either personally or aiding and abetting that other~~  
13 ~~person, commits an act of oral copulation upon a victim who is~~  
14 ~~under 14 years of age, when the act is accomplished against the~~  
15 ~~victim's will by means of force or fear of immediate and unlawful~~  
16 ~~bodily injury on the victim or another person, shall be punished~~  
17 ~~by imprisonment in the state prison for 10, 12, or 14 years.~~

18 (3) ~~Any person who, while voluntarily acting in concert with~~  
19 ~~another person, either personally or aiding and abetting that other~~  
20 ~~person, commits an act of oral copulation upon a victim who is a~~  
21 ~~minor 14 years of age or older, when the act is accomplished~~  
22 ~~against the victim's will by means of force or fear of immediate~~  
23 ~~and unlawful bodily injury on the victim or another person, shall~~  
24 ~~be punished by imprisonment in the state prison for 8, 10, or 12~~  
25 ~~years.~~

26 (4) ~~This paragraph does not preclude prosecution under Section~~  
27 ~~269, Section 288.7, or any other provision of law.~~

28 (e) ~~Any person who participates in an act of oral copulation~~  
29 ~~while confined in any state prison, as defined in Section 4504 or~~  
30 ~~in any local detention facility as defined in Section 6031.4, shall~~  
31 ~~be punished by imprisonment in the state prison, or in a county~~  
32 ~~jail for a period of not more than one year.~~

33 (f) ~~Any person who commits an act of oral copulation, and the~~  
34 ~~victim is at the time unconscious of the nature of the act and this~~  
35 ~~is known to the person committing the act, shall be punished by~~  
36 ~~imprisonment in the state prison for a period of three, six, or eight~~  
37 ~~years. As used in this subdivision, "unconscious of the nature of~~  
38 ~~the act" means incapable of resisting because the victim meets one~~  
39 ~~of the following conditions:~~

40 (1) ~~Was unconscious or asleep.~~

1     ~~(2) Was not aware, knowing, perceiving, or cognizant that the~~  
2     ~~act occurred.~~

3     ~~(3) Was not aware, knowing, perceiving, or cognizant of the~~  
4     ~~essential characteristics of the act due to the perpetrator's fraud in~~  
5     ~~fact.~~

6     ~~(4) Was not aware, knowing, perceiving, or cognizant of the~~  
7     ~~essential characteristics of the act due to the perpetrator's fraudulent~~  
8     ~~representation that the oral copulation served a professional purpose~~  
9     ~~when it served no professional purpose.~~

10    ~~(g) Except as provided in subdivision (h), any person who~~  
11    ~~commits an act of oral copulation, and the victim is at the time~~  
12    ~~incapable, because of a mental disorder or developmental or~~  
13    ~~physical disability, of giving legal consent, and this is known or~~  
14    ~~reasonably should be known to the person committing the act,~~  
15    ~~shall be punished by imprisonment in the state prison, for 9, 11,~~  
16    ~~or 13 years. Notwithstanding the existence of a conservatorship~~  
17    ~~pursuant to the provisions of the Lanterman-Petris-Short Act (Part~~  
18    ~~1 (commencing with Section 5000) of Division 5 of the Welfare~~  
19    ~~and Institutions Code), the prosecuting attorney shall prove, as an~~  
20    ~~element of the crime, that a mental disorder or developmental or~~  
21    ~~physical disability rendered the alleged victim incapable of giving~~  
22    ~~consent.~~

23    ~~(h) Any person who commits an act of oral copulation, and the~~  
24    ~~victim is at the time incapable, because of a mental disorder or~~  
25    ~~developmental or physical disability, of giving legal consent, and~~  
26    ~~this is known or reasonably should be known to the person~~  
27    ~~committing the act, and both the defendant and the victim are at~~  
28    ~~the time confined in a state hospital for the care and treatment of~~  
29    ~~the mentally disordered or in any other public or private facility~~  
30    ~~for the care and treatment of the mentally disordered approved by~~  
31    ~~a county mental health director, shall be punished by imprisonment~~  
32    ~~in the state prison for 9, 11, or 13 years. Notwithstanding the~~  
33    ~~existence of a conservatorship pursuant to the provisions of the~~  
34    ~~Lanterman-Petris-Short Act (Part 1 (commencing with Section~~  
35    ~~5000) of Division 5 of the Welfare and Institutions Code), the~~  
36    ~~prosecuting attorney shall prove, as an element of the crime, that~~  
37    ~~a mental disorder or developmental or physical disability rendered~~  
38    ~~the alleged victim incapable of giving legal consent.~~

39    ~~(i) Any person who commits an act of oral copulation, where~~  
40    ~~the victim is prevented from resisting by any intoxicating or~~

1 anesthetic substance, or any controlled substance, and this condition  
2 was known, or reasonably should have been known by the accused;  
3 shall be punished by imprisonment in the state prison for a period  
4 of three, six, or eight years.

5 (j) Any person who commits an act of oral copulation, where  
6 the victim submits under the belief that the person committing the  
7 act is the victim's spouse, and this belief is induced by any artifice,  
8 pretense, or concealment practiced by the accused, with intent to  
9 induce the belief, shall be punished by imprisonment in the state  
10 prison for a period of three, six, or eight years.

11 (k) Any person who commits an act of oral copulation, where  
12 the act is accomplished against the victim's will by threatening to  
13 use the authority of a public official to incarcerate, arrest, or deport  
14 the victim or another, and the victim has a reasonable belief that  
15 the perpetrator is a public official, shall be punished by  
16 imprisonment in the state prison for a period of three, six, or eight  
17 years.

18 As used in this subdivision, "public official" means a person  
19 employed by a governmental agency who has the authority, as part  
20 of that position, to incarcerate, arrest, or deport another. The  
21 perpetrator does not actually have to be a public official.

22 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
23 means a threat to kidnap or falsely imprison, or to inflict extreme  
24 pain, serious bodily injury, or death.

25 (m) In addition to any punishment imposed under this section,  
26 the judge may assess a fine not to exceed seventy dollars (\$70)  
27 against any person who violates this section, with the proceeds of  
28 this fine to be used in accordance with Section 1463.23. The court  
29 shall, however, take into consideration the defendant's ability to  
30 pay, and no defendant shall be denied probation because of his or  
31 her inability to pay the fine permitted under this subdivision.

32 *SEC. 3. Section 286 of the Penal Code is amended to read:*

33 286. (a) Sodomy is sexual conduct consisting of contact  
34 between the penis of one person and the anus of another person.  
35 Any sexual penetration, however slight, is sufficient to complete  
36 the crime of sodomy.

37 (b) (1) Except as provided in Section 288, any person who  
38 participates in an act of sodomy with another person who is under  
39 18 years of age shall be punished by imprisonment in the state  
40 prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the

1 perpetrator will execute the threat, shall be punished by  
2 imprisonment in the state prison for five, seven, or nine years.

3 (2) Any person who, while voluntarily acting in concert with  
4 another person, either personally or aiding and abetting that other  
5 person, commits an act of sodomy upon a victim who is under 14  
6 years of age, when the act is accomplished against the victim's  
7 will by means of force or fear of immediate and unlawful bodily  
8 injury on the victim or another person, shall be punished by  
9 imprisonment in the state prison for 10, 12, or 14 years.

10 (3) Any person who, while voluntarily acting in concert with  
11 another person, either personally or aiding and abetting that other  
12 person, commits an act of sodomy upon a victim who is a minor  
13 14 years of age or older, when the act is accomplished against the  
14 victim's will by means of force or fear of immediate and unlawful  
15 bodily injury on the victim or another person, shall be punished  
16 by imprisonment in the state prison for 7, 9, or 11 years.

17 (4) This subdivision does not preclude prosecution under Section  
18 269, Section 288.7, or any other provision of law.

19 (e) Any person who participates in an act of sodomy with any  
20 person of any age while confined in any state prison, as defined  
21 in Section 4504, or in any local detention facility, as defined in  
22 Section 6031.4, shall be punished by imprisonment in the state  
23 prison, or in a county jail for not more than one year.

24 (f) Any person who commits an act of sodomy, and the victim  
25 is at the time unconscious of the nature of the act and this is known  
26 to the person committing the act, shall be punished by  
27 imprisonment in the state prison for three, six, or eight years. As  
28 used in this subdivision, "unconscious of the nature of the act"  
29 means incapable of resisting because the victim meets one of the  
30 following conditions:

31 (1) Was unconscious or asleep.

32 (2) Was not aware, knowing, perceiving, or cognizant that the  
33 act occurred.

34 (3) Was not aware, knowing, perceiving, or cognizant of the  
35 essential characteristics of the act due to the perpetrator's fraud in  
36 fact.

37 (4) Was not aware, knowing, perceiving, or cognizant of the  
38 essential characteristics of the act due to the perpetrator's fraudulent  
39 representation that the sexual penetration served a professional  
40 purpose when it served no professional purpose.

1 (g) Except as provided in subdivision (h), a person who commits  
2 an act of sodomy, and the victim is at the time incapable, because  
3 of a mental disorder or developmental or physical disability, of  
4 giving legal consent, and this is known or reasonably should be  
5 known to the person committing the act, shall be punished by  
6 imprisonment in the state prison for ~~three, six, or eight~~ 9, 11, or  
7 13 years. Notwithstanding the existence of a conservatorship  
8 pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing  
9 with Section 5000) of Division 5 of the Welfare and Institutions  
10 Code), the prosecuting attorney shall prove, as an element of the  
11 crime, that a mental disorder or developmental or physical  
12 disability rendered the alleged victim incapable of giving consent.

13 (h) Any person who commits an act of sodomy, and the victim  
14 is at the time incapable, because of a mental disorder or  
15 developmental or physical disability, of giving legal consent, and  
16 this is known or reasonably should be known to the person  
17 committing the act, and both the defendant and the victim are at  
18 the time confined in a state hospital for the care and treatment of  
19 the mentally disordered or in any other public or private facility  
20 for the care and treatment of the mentally disordered approved by  
21 a county mental health director, shall be punished by imprisonment  
22 in the state prison, ~~or in a county jail for not more than one year.~~  
23 *prison for 9, 11, or 13 years.* Notwithstanding the existence of a  
24 conservatorship pursuant to the Lanterman-Petris-Short Act (Part  
25 1 (commencing with Section 5000) of Division 5 of the Welfare  
26 and Institutions Code), the prosecuting attorney shall prove, as an  
27 element of the crime, that a mental disorder or developmental or  
28 physical disability rendered the alleged victim incapable of giving  
29 legal consent.

30 (i) Any person who commits an act of sodomy, where the victim  
31 is prevented from resisting by an intoxicating or anesthetic  
32 substance, or any controlled substance, and this condition was  
33 known, or reasonably should have been known by the accused,  
34 shall be punished by imprisonment in the state prison for three,  
35 six, or eight years.

36 (j) Any person who commits an act of sodomy, where the victim  
37 submits under the belief that the person committing the act is  
38 someone known to the victim other than the accused, and this  
39 belief is induced by any artifice, pretense, or concealment practiced



1 by the accused, with intent to induce the belief, shall be punished  
2 by imprisonment in the state prison for three, six, or eight years.

3 (k) Any person who commits an act of sodomy, where the act  
4 is accomplished against the victim's will by threatening to use the  
5 authority of a public official to incarcerate, arrest, or deport the  
6 victim or another, and the victim has a reasonable belief that the  
7 perpetrator is a public official, shall be punished by imprisonment  
8 in the state prison for three, six, or eight years.

9 As used in this subdivision, "public official" means a person  
10 employed by a governmental agency who has the authority, as part  
11 of that position, to incarcerate, arrest, or deport another. The  
12 perpetrator does not actually have to be a public official.

13 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
14 means a threat to kidnap or falsely imprison, or inflict extreme  
15 pain, serious bodily injury, or death.

16 (m) In addition to any punishment imposed under this section,  
17 the judge may assess a fine not to exceed seventy dollars (\$70)  
18 against any person who violates this section, with the proceeds of  
19 this fine to be used in accordance with Section 1463.23. The court,  
20 however, shall take into consideration the defendant's ability to  
21 pay, and no defendant shall be denied probation because of his or  
22 her inability to pay the fine permitted under this subdivision.

23 *SEC. 4. Section 288a of the Penal Code is amended to read:*

24 288a. (a) Oral copulation is the act of copulating the mouth  
25 of one person with the sexual organ or anus of another person.

26 (b) (1) Except as provided in Section 288, any person who  
27 participates in an act of oral copulation with another person who  
28 is under 18 years of age shall be punished by imprisonment in the  
29 state prison, or in a county jail for a period of not more than one  
30 year.

31 (2) Except as provided in Section 288, any person over 21 years  
32 of age who participates in an act of oral copulation with another  
33 person who is under 16 years of age is guilty of a felony.

34 (c) (1) Any person who participates in an act of oral copulation  
35 with another person who is under 14 years of age and more than  
36 10 years younger than he or she shall be punished by imprisonment  
37 in the state prison for three, six, or eight years.

38 (2) (A) Any person who commits an act of oral copulation when  
39 the act is accomplished against the victim's will by means of force,  
40 violence, duress, menace, or fear of immediate and unlawful bodily

1 injury on the victim or another person shall be punished by  
2 imprisonment in the state prison for three, six, or eight years.

3 (B) Any person who commits an act of oral copulation upon a  
4 person who is under 14 years of age, when the act is accomplished  
5 against the victim's will by means of force, violence, duress,  
6 menace, or fear of immediate and unlawful bodily injury on the  
7 victim or another person, shall be punished by imprisonment in  
8 the state prison for 8, 10, or 12 years.

9 (C) Any person who commits an act of oral copulation upon a  
10 minor who is 14 years of age or older, when the act is accomplished  
11 against the victim's will by means of force, violence, duress,  
12 menace, or fear of immediate and unlawful bodily injury on the  
13 victim or another person, shall be punished by imprisonment in  
14 the state prison for 6, 8, or 10 years.

15 (D) This paragraph does not preclude prosecution under Section  
16 269, Section 288.7, or any other provision of law.

17 (3) Any person who commits an act of oral copulation where  
18 the act is accomplished against the victim's will by threatening to  
19 retaliate in the future against the victim or any other person, and  
20 there is a reasonable possibility that the perpetrator will execute  
21 the threat, shall be punished by imprisonment in the state prison  
22 for three, six, or eight years.

23 (d) (1) Any person who, while voluntarily acting in concert  
24 with another person, either personally or by aiding and abetting  
25 that other person, commits an act of oral copulation (A) when the  
26 act is accomplished against the victim's will by means of force or  
27 fear of immediate and unlawful bodily injury on the victim or  
28 another person, or (B) where the act is accomplished against the  
29 victim's will by threatening to retaliate in the future against the  
30 victim or any other person, and there is a reasonable possibility  
31 that the perpetrator will execute the threat, or (C) where the victim  
32 is at the time incapable, because of a mental disorder or  
33 developmental or physical disability, of giving legal consent, and  
34 this is known or reasonably should be known to the person  
35 committing the act, shall be punished by imprisonment in the state  
36 prison for five, seven, or nine years. Notwithstanding the  
37 appointment of a conservator with respect to the victim pursuant  
38 to the provisions of the Lanterman-Petris-Short Act (Part 1  
39 (commencing with Section 5000) of Division 5 of the Welfare and  
40 Institutions Code), the prosecuting attorney shall prove, as an

1 element of the crime described under paragraph (3), that a mental  
2 disorder or developmental or physical disability rendered the  
3 alleged victim incapable of giving legal consent.

4 (2) Any person who, while voluntarily acting in concert with  
5 another person, either personally or aiding and abetting that other  
6 person, commits an act of oral copulation upon a victim who is  
7 under 14 years of age, when the act is accomplished against the  
8 victim's will by means of force or fear of immediate and unlawful  
9 bodily injury on the victim or another person, shall be punished  
10 by imprisonment in the state prison for 10, 12, or 14 years.

11 (3) Any person who, while voluntarily acting in concert with  
12 another person, either personally or aiding and abetting that other  
13 person, commits an act of oral copulation upon a victim who is a  
14 minor 14 years of age or older, when the act is accomplished  
15 against the victim's will by means of force or fear of immediate  
16 and unlawful bodily injury on the victim or another person, shall  
17 be punished by imprisonment in the state prison for 8, 10, or 12  
18 years.

19 (4) This paragraph does not preclude prosecution under Section  
20 269, Section 288.7, or any other provision of law.

21 (e) Any person who participates in an act of oral copulation  
22 while confined in any state prison, as defined in Section 4504 or  
23 in any local detention facility as defined in Section 6031.4, shall  
24 be punished by imprisonment in the state prison, or in a county  
25 jail for a period of not more than one year.

26 (f) Any person who commits an act of oral copulation, and the  
27 victim is at the time unconscious of the nature of the act and this  
28 is known to the person committing the act, shall be punished by  
29 imprisonment in the state prison for a period of three, six, or eight  
30 years. As used in this subdivision, "unconscious of the nature of  
31 the act" means incapable of resisting because the victim meets one  
32 of the following conditions:

33 (1) Was unconscious or asleep.

34 (2) Was not aware, knowing, perceiving, or cognizant that the  
35 act occurred.

36 (3) Was not aware, knowing, perceiving, or cognizant of the  
37 essential characteristics of the act due to the perpetrator's fraud in  
38 fact.

39 (4) Was not aware, knowing, perceiving, or cognizant of the  
40 essential characteristics of the act due to the perpetrator's fraudulent

1 representation that the oral copulation served a professional purpose  
2 when it served no professional purpose.

3 (g) Except as provided in subdivision (h), any person who  
4 commits an act of oral copulation, and the victim is at the time  
5 incapable, because of a mental disorder or developmental or  
6 physical disability, of giving legal consent, and this is known or  
7 reasonably should be known to the person committing the act,  
8 shall be punished by imprisonment in the state prison, ~~for three,~~  
9 ~~six, or eight~~ *prison for 9, 11, or 13 years*. Notwithstanding the  
10 existence of a conservatorship pursuant to the provisions of the  
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
12 5000) of Division 5 of the Welfare and Institutions Code), the  
13 prosecuting attorney shall prove, as an element of the crime, that  
14 a mental disorder or developmental or physical disability rendered  
15 the alleged victim incapable of giving consent.

16 (h) Any person who commits an act of oral copulation, and the  
17 victim is at the time incapable, because of a mental disorder or  
18 developmental or physical disability, of giving legal consent, and  
19 this is known or reasonably should be known to the person  
20 committing the act, and both the defendant and the victim are at  
21 the time confined in a state hospital for the care and treatment of  
22 the mentally disordered or in any other public or private facility  
23 for the care and treatment of the mentally disordered approved by  
24 a county mental health director, shall be punished by imprisonment  
25 in the state prison, ~~or in a county jail for a period of not more than~~  
26 ~~one year.~~ *prison for 9, 11, or 13 years*. Notwithstanding the  
27 existence of a conservatorship pursuant to the provisions of the  
28 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
29 5000) of Division 5 of the Welfare and Institutions Code), the  
30 prosecuting attorney shall prove, as an element of the crime, that  
31 a mental disorder or developmental or physical disability rendered  
32 the alleged victim incapable of giving legal consent.

33 (i) Any person who commits an act of oral copulation, where  
34 the victim is prevented from resisting by any intoxicating or  
35 anesthetic substance, or any controlled substance, and this condition  
36 was known, or reasonably should have been known by the accused,  
37 shall be punished by imprisonment in the state prison for a period  
38 of three, six, or eight years.

39 (j) Any person who commits an act of oral copulation, where  
40 the victim submits under the belief that the person committing the

act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 288.5 of the Penal Code is amended to read:

288.5. (a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years *of age* at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years *of age* at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.

(b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.

(c) No other act of substantial sexual conduct, as defined in subdivision (b) of Section 1203.066, with a child under 14 years of age at the time of the commission of the offenses, or lewd and lascivious acts, as defined in Section 288, involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.

(d) (1) Any person who either resides in the same home with a disabled person or has recurring access to a disabled person, who, over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with the disabled person, as defined in subdivision (b) of Section 1203.066, is guilty of the offense of continuous sexual abuse of a disabled person and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.

(2) As used in this subdivision, “disabled person” means a person who, at the time of the offense, is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this was known or reasonably should have been known to the person committing the act.

SEC. 6. Section 289 of the Penal Code is amended to read:

~~289. (a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.~~

~~(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.~~

1     ~~(C) Any person who commits an act of sexual penetration upon~~  
2 ~~a minor who is 14 years of age or older, when the act is~~  
3 ~~accomplished against the victim's will by means of force, violence,~~  
4 ~~duress, menace, or fear of immediate and unlawful bodily injury~~  
5 ~~on the victim or another person, shall be punished by imprisonment~~  
6 ~~in the state prison for 6, 8, or 10 years.~~

7     ~~(D) This paragraph does not preclude prosecution under Section~~  
8 ~~269, Section 288.7, or any other provision of law.~~

9     ~~(2) Any person who commits an act of sexual penetration when~~  
10 ~~the act is accomplished against the victim's will by threatening to~~  
11 ~~retaliate in the future against the victim or any other person, and~~  
12 ~~there is a reasonable possibility that the perpetrator will execute~~  
13 ~~the threat, shall be punished by imprisonment in the state prison~~  
14 ~~for three, six, or eight years.~~

15     ~~(b) Except as provided in subdivision (c), any person who~~  
16 ~~commits an act of sexual penetration, and the victim is at the time~~  
17 ~~incapable, because of a mental disorder or developmental or~~  
18 ~~physical disability, of giving legal consent, and this is known or~~  
19 ~~reasonably should be known to the person committing the act or~~  
20 ~~causing the act to be committed, shall be punished by imprisonment~~  
21 ~~in the state prison for 9, 11, or 13 years. Notwithstanding the~~  
22 ~~appointment of a conservator with respect to the victim pursuant~~  
23 ~~to the provisions of the Lanterman-Petris-Short Act (Part 1~~  
24 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~  
25 ~~Institutions Code), the prosecuting attorney shall prove, as an~~  
26 ~~element of the crime, that a mental disorder or developmental or~~  
27 ~~physical disability rendered the alleged victim incapable of giving~~  
28 ~~legal consent.~~

29     ~~(c) Any person who commits an act of sexual penetration, and~~  
30 ~~the victim is at the time incapable, because of a mental disorder~~  
31 ~~or developmental or physical disability, of giving legal consent,~~  
32 ~~and this is known or reasonably should be known to the person~~  
33 ~~committing the act or causing the act to be committed and both~~  
34 ~~the defendant and the victim are at the time confined in a state~~  
35 ~~hospital for the care and treatment of the mentally disordered or~~  
36 ~~in any other public or private facility for the care and treatment of~~  
37 ~~the mentally disordered approved by a county mental health~~  
38 ~~director, shall be punished by imprisonment in the state prison for~~  
39 ~~9, 11, or 13. Notwithstanding the existence of a conservatorship~~  
40 ~~pursuant to the provisions of the Lanterman-Petris-Short Act (Part~~

1 ~~1 (commencing with Section 5000) of Division 5 of the Welfare~~  
2 ~~and Institutions Code), the prosecuting attorney shall prove, as an~~  
3 ~~element of the crime, that a mental disorder or developmental or~~  
4 ~~physical disability rendered the alleged victim incapable of giving~~  
5 ~~legal consent.~~

6 ~~(d) Any person who commits an act of sexual penetration, and~~  
7 ~~the victim is at the time unconscious of the nature of the act and~~  
8 ~~this is known to the person committing the act or causing the act~~  
9 ~~to be committed, shall be punished by imprisonment in the state~~  
10 ~~prison for three, six, or eight years. As used in this subdivision,~~  
11 ~~“unconscious of the nature of the act” means incapable of resisting~~  
12 ~~because the victim meets one of the following conditions:~~

13 ~~(1) Was unconscious or asleep.~~

14 ~~(2) Was not aware, knowing, perceiving, or cognizant that the~~  
15 ~~act occurred.~~

16 ~~(3) Was not aware, knowing, perceiving, or cognizant of the~~  
17 ~~essential characteristics of the act due to the perpetrator’s fraud in~~  
18 ~~fact.~~

19 ~~(4) Was not aware, knowing, perceiving, or cognizant of the~~  
20 ~~essential characteristics of the act due to the perpetrator’s fraudulent~~  
21 ~~representation that the sexual penetration served a professional~~  
22 ~~purpose when it served no professional purpose.~~

23 ~~(e) Any person who commits an act of sexual penetration when~~  
24 ~~the victim is prevented from resisting by any intoxicating or~~  
25 ~~anesthetic substance, or any controlled substance, and this condition~~  
26 ~~was known, or reasonably should have been known by the accused,~~  
27 ~~shall be punished by imprisonment in the state prison for a period~~  
28 ~~of three, six, or eight years.~~

29 ~~(f) Any person who commits an act of sexual penetration when~~  
30 ~~the victim submits under the belief that the person committing the~~  
31 ~~act or causing the act to be committed is the victim’s spouse, and~~  
32 ~~this belief is induced by any artifice, pretense, or concealment~~  
33 ~~practiced by the accused, with intent to induce the belief, shall be~~  
34 ~~punished by imprisonment in the state prison for a period of three,~~  
35 ~~six, or eight years.~~

36 ~~(g) Any person who commits an act of sexual penetration when~~  
37 ~~the act is accomplished against the victim’s will by threatening to~~  
38 ~~use the authority of a public official to incarcerate, arrest, or deport~~  
39 ~~the victim or another, and the victim has a reasonable belief that~~  
40 ~~the perpetrator is a public official, shall be punished by~~



1 imprisonment in the state prison for a period of three, six, or eight  
2 years.

3 As used in this subdivision, “public official” means a person  
4 employed by a governmental agency who has the authority, as part  
5 of that position, to incarcerate, arrest, or deport another. The  
6 perpetrator does not actually have to be a public official.

7 (h) Except as provided in Section 288, any person who  
8 participates in an act of sexual penetration with another person  
9 who is under 18 years of age shall be punished by imprisonment  
10 in the state prison or in the county jail for a period of not more  
11 than one year.

12 (i) Except as provided in Section 288, any person over the age  
13 of 21 years who participates in an act of sexual penetration with  
14 another person who is under 16 years of age shall be guilty of a  
15 felony.

16 (j) Any person who participates in an act of sexual penetration  
17 with another person who is under 14 years of age and who is more  
18 than 10 years younger than he or she shall be punished by  
19 imprisonment in the state prison for three, six, or eight years.

20 (k) As used in this section:

21 (1) “Sexual penetration” is the act of causing the penetration,  
22 however slight, of the genital or anal opening of any person or  
23 causing another person to so penetrate the defendant’s or another  
24 person’s genital or anal opening for the purpose of sexual arousal,  
25 gratification, or abuse by any foreign object, substance, instrument,  
26 or device, or by any unknown object.

27 (2) “Foreign object, substance, instrument, or device” shall  
28 include any part of the body, except a sexual organ.

29 (3) “Unknown object” shall include any foreign object,  
30 substance, instrument, or device, or any part of the body, including  
31 a penis, when it is not known whether penetration was by a penis  
32 or by a foreign object, substance, instrument, or device, or by any  
33 other part of the body.

34 (l) As used in subdivision (a), “threatening to retaliate” means  
35 a threat to kidnap or falsely imprison, or inflict extreme pain,  
36 serious bodily injury or death.

37 (m) As used in this section, “victim” includes any person who  
38 the defendant causes to penetrate the genital or anal opening of  
39 the defendant or another person or whose genital or anal opening  
40 is caused to be penetrated by the defendant or another person and

1 who otherwise qualifies as a victim under the requirements of this  
2 section.

3 *SEC. 6. Section 289 of the Penal Code is amended to read:*

4 289. (a) (1) (A) Any person who commits an act of sexual  
5 penetration when the act is accomplished against the victim's will  
6 by means of force, violence, duress, menace, or fear of immediate  
7 and unlawful bodily injury on the victim or another person shall  
8 be punished by imprisonment in the state prison for three, six, or  
9 eight years.

10 (B) Any person who commits an act of sexual penetration upon  
11 a child who is under 14 years of age, when the act is accomplished  
12 against the victim's will by means of force, violence, duress,  
13 menace, or fear of immediate and unlawful bodily injury on the  
14 victim or another person, shall be punished by imprisonment in  
15 the state prison for 8, 10, or 12 years.

16 (C) Any person who commits an act of sexual penetration upon  
17 a minor who is 14 years of age or older, when the act is  
18 accomplished against the victim's will by means of force, violence,  
19 duress, menace, or fear of immediate and unlawful bodily injury  
20 on the victim or another person, shall be punished by imprisonment  
21 in the state prison for 6, 8, or 10 years.

22 (D) This paragraph does not preclude prosecution under Section  
23 269, Section 288.7, or any other provision of law.

24 (2) Any person who commits an act of sexual penetration when  
25 the act is accomplished against the victim's will by threatening to  
26 retaliate in the future against the victim or any other person, and  
27 there is a reasonable possibility that the perpetrator will execute  
28 the threat, shall be punished by imprisonment in the state prison  
29 for three, six, or eight years.

30 (b) Except as provided in subdivision (c), any person who  
31 commits an act of sexual penetration, and the victim is at the time  
32 incapable, because of a mental disorder or developmental or  
33 physical disability, of giving legal consent, and this is known or  
34 reasonably should be known to the person committing the act or  
35 causing the act to be committed, shall be punished by imprisonment  
36 in the state prison for ~~three, six, or eight~~ 9, 11, or 13 years.  
37 Notwithstanding the appointment of a conservator with respect to  
38 the victim pursuant to the provisions of the Lanterman-Petris-Short  
39 Act (Part 1 (commencing with Section 5000) of Division 5 of the  
40 Welfare and Institutions Code), the prosecuting attorney shall

1 prove, as an element of the crime, that a mental disorder or  
2 developmental or physical disability rendered the alleged victim  
3 incapable of giving legal consent.

4 (c) Any person who commits an act of sexual penetration, and  
5 the victim is at the time incapable, because of a mental disorder  
6 or developmental or physical disability, of giving legal consent,  
7 and this is known or reasonably should be known to the person  
8 committing the act or causing the act to be committed and both  
9 the defendant and the victim are at the time confined in a state  
10 hospital for the care and treatment of the mentally disordered or  
11 in any other public or private facility for the care and treatment of  
12 the mentally disordered approved by a county mental health  
13 director, shall be punished by imprisonment in the state prison, or  
14 ~~in a county jail for a period of not more than one year.~~ *prison for*  
15 *9, 11, or 13 years.* Notwithstanding the existence of a  
16 conservatorship pursuant to the provisions of the  
17 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
18 5000) of Division 5 of the Welfare and Institutions Code), the  
19 prosecuting attorney shall prove, as an element of the crime, that  
20 a mental disorder or developmental or physical disability rendered  
21 the alleged victim incapable of giving legal consent.

22 (d) Any person who commits an act of sexual penetration, and  
23 the victim is at the time unconscious of the nature of the act and  
24 this is known to the person committing the act or causing the act  
25 to be committed, shall be punished by imprisonment in the state  
26 prison for three, six, or eight years. As used in this subdivision,  
27 “unconscious of the nature of the act” means incapable of resisting  
28 because the victim meets one of the following conditions:

29 (1) Was unconscious or asleep.

30 (2) Was not aware, knowing, perceiving, or cognizant that the  
31 act occurred.

32 (3) Was not aware, knowing, perceiving, or cognizant of the  
33 essential characteristics of the act due to the perpetrator’s fraud in  
34 fact.

35 (4) Was not aware, knowing, perceiving, or cognizant of the  
36 essential characteristics of the act due to the perpetrator’s fraudulent  
37 representation that the sexual penetration served a professional  
38 purpose when it served no professional purpose.

39 (e) Any person who commits an act of sexual penetration when  
40 the victim is prevented from resisting by any intoxicating or

1 anesthetic substance, or any controlled substance, and this condition  
2 was known, or reasonably should have been known by the accused,  
3 shall be punished by imprisonment in the state prison for a period  
4 of three, six, or eight years.

5 (f) Any person who commits an act of sexual penetration when  
6 the victim submits under the belief that the person committing the  
7 act or causing the act to be committed is someone known to the  
8 victim other than the accused, and this belief is induced by any  
9 artifice, pretense, or concealment practiced by the accused, with  
10 intent to induce the belief, shall be punished by imprisonment in  
11 the state prison for a period of three, six, or eight years.

12 (g) Any person who commits an act of sexual penetration when  
13 the act is accomplished against the victim's will by threatening to  
14 use the authority of a public official to incarcerate, arrest, or deport  
15 the victim or another, and the victim has a reasonable belief that  
16 the perpetrator is a public official, shall be punished by  
17 imprisonment in the state prison for a period of three, six, or eight  
18 years.

19 As used in this subdivision, "public official" means a person  
20 employed by a governmental agency who has the authority, as part  
21 of that position, to incarcerate, arrest, or deport another. The  
22 perpetrator does not actually have to be a public official.

23 (h) Except as provided in Section 288, any person who  
24 participates in an act of sexual penetration with another person  
25 who is under 18 years of age shall be punished by imprisonment  
26 in the state prison or in a county jail for a period of not more than  
27 one year.

28 (i) Except as provided in Section 288, any person over 21 years  
29 of age who participates in an act of sexual penetration with another  
30 person who is under 16 years of age shall be guilty of a felony.

31 (j) Any person who participates in an act of sexual penetration  
32 with another person who is under 14 years of age and who is more  
33 than 10 years younger than he or she shall be punished by  
34 imprisonment in the state prison for three, six, or eight years.

35 (k) As used in this section:

36 (1) "Sexual penetration" is the act of causing the penetration,  
37 however slight, of the genital or anal opening of any person or  
38 causing another person to so penetrate the defendant's or another  
39 person's genital or anal opening for the purpose of sexual arousal,

1 gratification, or abuse by any foreign object, substance, instrument,  
2 or device, or by any unknown object.

3 (2) “Foreign object, substance, instrument, or device” shall  
4 include any part of the body, except a sexual organ.

5 (3) “Unknown object” shall include any foreign object,  
6 substance, instrument, or device, or any part of the body, including  
7 a penis, when it is not known whether penetration was by a penis  
8 or by a foreign object, substance, instrument, or device, or by any  
9 other part of the body.

10 (l) As used in subdivision (a), “threatening to retaliate” means  
11 a threat to kidnap or falsely imprison, or inflict extreme pain,  
12 serious bodily injury or death.

13 (m) As used in this section, “victim” includes any person who  
14 the defendant causes to penetrate the genital or anal opening of  
15 the defendant or another person or whose genital or anal opening  
16 is caused to be penetrated by the defendant or another person and  
17 who otherwise qualifies as a victim under the requirements of this  
18 section.

19 SEC. 7. Section 667.61 of the Penal Code is amended to read:

20 667.61. (a) Except as provided in subdivision (j), (l), or (m),  
21 any person who is convicted of an offense specified in subdivision  
22 (c) under one or more of the circumstances specified in subdivision  
23 (d) or under two or more of the circumstances specified in  
24 subdivision (e) shall be punished by imprisonment in the state  
25 prison for 25 years to life.

26 (b) Except as provided in subdivision (a), (j), (l), or (m), any  
27 person who is convicted of an offense specified in subdivision (c)  
28 under one of the circumstances specified in subdivision (e) shall  
29 be punished by imprisonment in the state prison for 15 years to  
30 life.

31 (c) This section shall apply to any of the following offenses:

32 (1) Rape, in violation of paragraph (1), (2), or (6) of subdivision  
33 (a) of Section 261.

34 (2) Spousal rape, in violation of paragraph (1) or (4) of  
35 subdivision (a) of Section 262.

36 (3) Rape, spousal rape, or sexual penetration, in concert, in  
37 violation of Section 264.1.

38 (4) Lewd or lascivious act, in violation of subdivision (b) of  
39 Section 288.

1 (5) Sexual penetration, in violation of subdivision (a), (b), or  
2 (c) of Section 289.

3 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision  
4 (c), or subdivision (d), (g), or (h) of Section 286.

5 (7) Oral copulation, in violation of paragraph (2) or (3) of  
6 subdivision (c), or subdivision (d), (g), or (h) of Section 288a.

7 (8) Lewd or lascivious act, in violation of subdivision (a) of  
8 Section 288.

9 (9) Continuous sexual abuse of a child or continuous sexual  
10 abuse of a disabled person, in violation of Section 288.5.

11 (d) The following circumstances shall apply to the offenses  
12 specified in subdivision (c):

13 (1) The defendant has been previously convicted of an offense  
14 specified in subdivision (c), including an offense committed in  
15 another jurisdiction that includes all of the elements of an offense  
16 specified in subdivision (c).

17 (2) The defendant kidnapped the victim of the present offense  
18 and the movement of the victim substantially increased the risk of  
19 harm to the victim over and above that level of risk necessarily  
20 inherent in the underlying offense in subdivision (c).

21 (3) The defendant inflicted aggravated mayhem or torture on  
22 the victim or another person in the commission of the present  
23 offense in violation of Section 205 or 206.

24 (4) The defendant committed the present offense during the  
25 commission of a burglary of the first degree, as defined in  
26 subdivision (a) of Section 460, with intent to commit an offense  
27 specified in subdivision (c).

28 (5) The defendant committed the present offense in violation  
29 of Section 264.1, subdivision (d) of Section 286, or subdivision  
30 (d) of Section 288a, and, in the commission of that offense, any  
31 person committed any act described in paragraph (2), (3), or (4)  
32 of this subdivision.

33 (6) The defendant personally inflicted great bodily injury on  
34 the victim or another person in the commission of the present  
35 offense in violation of Section 12022.53, 12022.7, or 12022.8.

36 (7) The defendant personally inflicted bodily harm on the victim  
37 who was under 14 years of age.

38 (e) The following circumstances shall apply to the offenses  
39 specified in subdivision (c):

1 (1) Except as provided in paragraph (2) of subdivision (d), the  
2 defendant kidnapped the victim of the present offense in violation  
3 of Section 207, 209, or 209.5.

4 (2) Except as provided in paragraph (4) of subdivision (d), the  
5 defendant committed the present offense during the commission  
6 of a burglary in violation of Section 459.

7 (3) The defendant personally used a dangerous or deadly weapon  
8 or a firearm in the commission of the present offense in violation  
9 of Section 12022, 12022.3, 12022.5, or 12022.53.

10 (4) The defendant has been convicted in the present case or  
11 cases of committing an offense specified in subdivision (c) against  
12 more than one victim.

13 (5) The defendant engaged in the tying or binding of the victim  
14 or another person in the commission of the present offense.

15 (6) The defendant administered a controlled substance to the  
16 victim in the commission of the present offense in violation of  
17 Section 12022.75.

18 (7) The defendant committed the present offense in violation  
19 of Section 264.1, subdivision (d) of Section 286, or subdivision  
20 (d) of Section 288a, and, in the commission of that offense, any  
21 person committed any act described in paragraph (1), (2), (3), (5),  
22 or (6) of this subdivision or paragraph (6) of subdivision (d).

23 (f) If only the minimum number of circumstances specified in  
24 subdivision (d) or (e) that are required for the punishment provided  
25 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and  
26 proved, that circumstance or those circumstances shall be used as  
27 the basis for imposing the term provided in subdivision (a), (b),  
28 (j), (l), or (m) whichever is greater, rather than being used to impose  
29 the punishment authorized under any other provision of law, unless  
30 another provision of law provides for a greater penalty or the  
31 punishment under another provision of law can be imposed in  
32 addition to the punishment provided by this section. However, if  
33 any additional circumstance or circumstances specified in  
34 subdivision (d) or (e) have been pled and proved, the minimum  
35 number of circumstances shall be used as the basis for imposing  
36 the term provided in subdivision (a), (j), or (l) and any other  
37 additional circumstance or circumstances shall be used to impose  
38 any punishment or enhancement authorized under any other  
39 provision of law.

1 (g) Notwithstanding Section 1385 or any other provision of law,  
2 the court shall not strike any allegation, admission, or finding of  
3 any of the circumstances specified in subdivision (d) or (e) for any  
4 person who is subject to punishment under this section.

5 (h) Notwithstanding any other provision of law, probation shall  
6 not be granted to, nor shall the execution or imposition of sentence  
7 be suspended for, any person who is subject to punishment under  
8 this section.

9 (i) For any offense specified in paragraphs (1) to (7), inclusive,  
10 of subdivision (c), or in paragraphs (1) to (6), inclusive, of  
11 subdivision (n), the court shall impose a consecutive sentence for  
12 each offense that results in a conviction under this section if the  
13 crimes involve separate victims or involve the same victim on  
14 separate occasions as defined in subdivision (d) of Section 667.6.

15 (j) (1) Any person who is convicted of an offense specified in  
16 subdivision (c), with the exception of a violation of subdivision  
17 (a) of Section 288, upon a victim who is a child under 14 years of  
18 age under one or more of the circumstances specified in subdivision  
19 (d) or under two or more of the circumstances specified in  
20 subdivision (e), shall be punished by imprisonment in the state  
21 prison for life without the possibility of parole. Where the person  
22 was under 18 years of age at the time of the offense, the person  
23 shall be punished by imprisonment in the state prison for 25 years  
24 to life.

25 (2) Any person who is convicted of an offense specified in  
26 subdivision (c) under one of the circumstances specified in  
27 subdivision (e), upon a victim who is a child under 14 years of  
28 age, shall be punished by imprisonment in the state prison for 25  
29 years to life.

30 (k) As used in this section, “bodily harm” means any substantial  
31 physical injury resulting from the use of force that is more than  
32 the force necessary to commit an offense specified in subdivision  
33 (c).

34 (l) Any person who is convicted of an offense specified in  
35 subdivision (n) under one or more of the circumstances specified  
36 in subdivision (d) or under two or more of the circumstances  
37 specified in subdivision (e), upon a victim who is a minor 14 years  
38 of age or older shall be punished by imprisonment in the state  
39 prison for life without the possibility of parole. If the person who  
40 was convicted was under 18 years of age at the time of the offense,



1 he or she shall be punished by imprisonment in the state prison  
2 for 25 years to life.

3 (m) Any person who is convicted of an offense specified in  
4 subdivision (n) under one of the circumstances specified in  
5 subdivision (e) against a minor 14 years of age or older shall be  
6 punished by imprisonment in the state prison for 25 years to life.

7 (n) Subdivisions (l) and (m) shall apply to any of the following  
8 offenses:

9 (1) Rape, in violation of paragraph (1) or (2) of subdivision (a)  
10 of Section 261.

11 (2) Spousal rape, in violation of paragraph (1) of subdivision  
12 (a) of Section 262.

13 (3) Rape, spousal rape, or sexual penetration, in concert, in  
14 violation of Section 264.1.

15 (4) Sexual penetration, in violation of paragraph (1) of  
16 subdivision (a) or subdivision (b) or (c) of Section 289.

17 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of  
18 Section 286, or in violation of subdivision (d), (g), or (h) of Section  
19 286.

20 (6) Oral copulation, in violation of paragraph (2) of subdivision  
21 (c) of Section 288a, or in violation of subdivision (d), (g), or (h)  
22 of Section 288a.

23 (o) The penalties provided in this section shall apply only if the  
24 existence of any circumstance specified in subdivision (d) or (e)  
25 is alleged in the accusatory pleading pursuant to this section, and  
26 is either admitted by the defendant in open court or found to be  
27 true by the trier of fact.

28 SEC. 8. Section 2933.1 of the Penal Code is amended to read:

29 2933.1. (a) Notwithstanding any other law, any person who  
30 is convicted of a felony offense listed in subdivision (c) of Section  
31 667.5 or subdivision (e) of this section shall accrue no more than  
32 15 percent of worktime credit, as defined in Section 2933.

33 (b) The 15-percent limitation provided in subdivision (a) shall  
34 apply whether the defendant is sentenced under Chapter 4.5  
35 (commencing with Section 1170) of Title 7 of Part 2 or sentenced  
36 under some other law. However, nothing in subdivision (a) shall  
37 affect the requirement of any statute that the defendant serve a  
38 specified period of time prior to minimum parole eligibility, nor  
39 shall any offender otherwise statutorily ineligible for credit be  
40 eligible for credit pursuant to this section.

(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).

(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative.

(e) This section applies to the following offenses:

(1) Rape in violation of paragraph (1) of subdivision (a) of Section 261.

(2) Sodomy in violation of subdivision (g) or (h) of Section 286.

(3) Oral copulation in violation of subdivision (g) or (h) of Section 288a.

(4) Sexual penetration in violation of subdivision (b) or (c) of Section 289.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.